

Volume: XXIX
Pages: 79
Exhibits: (See Index)

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

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COMMONWEALTH OF MASSACHUSETTS
vs. Indictment No.
KAREN READ 2282CR00117
* * * * *

Day 29 - Trial with Jury
Before the Honorable Beverly Cannone

EXCERPT - TESTIMONY OF BRIAN TULLY

APPEARANCES:

For The Commonwealth:
BY: Adam Lally
Laura McLaughlin
Assistants District Attorney

For Karen Read:
BY: Alan Jackson
David Yannetti
Elizabeth Little
Attorneys at Law

Norfolk Superior Courthouse
Dedham, Massachusetts
Wednesday, June 12, 2024

Paula M. Mills
Retired Certified Court Reporter
and Court Transcriptionist

I N D E X

WITNESS: DIRECT CROSS REDIRECT RECROSS

Brian Tully
 (By Mr. Lally) 29-3

E X H I B I T S

NUMBER		PAGE
"JJJ"	Weather records	29-23
569	Bag containing sneaker	29-39
570	Bag containing two pieces of red plastic	29-41
571	Bag containing two pieces of clear plastic	29-45

P R O C E E D I N G S

June 12, 2024

EXCERPT - TESTIMONY OF BRIAN TULLY

(Court in session at 9:12 a.m.)

(Defendant present. Jury present.)

MR. LALLY: The Commonwealth calls Lieutenant
Brian Tully to the stand.

Whereupon,

BRIAN TULLY

having been first duly sworn, was examined and
testified under oath as follows:

THE COURT: All right, Mr. Lally. Whenever
you're ready.

MR. LALLY: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. LALLY:

Q Good afternoon, sir.

A Good afternoon.

Q Could you please state your name and state
your last name for the jury?

A Brian Tully, T-U-L-L-Y.

Q And how are you employed, sir?

A With the Massachusetts State Police.

Q And how long have you been a member of the
state police?

1 A Eighteen years.

2 Q And what rank or assignment do you currently
3 have with the Mass. State Police?

4 A The rank I hold is detective lieutenant and my
5 current role is the Unit Commander for the Norfolk
6 State Police Detective Unit.

7 Q Now, how long have you been -- let me ask you
8 first, as far as -- how long have you been a lieutenant
9 with the state police?

10 A I was a first lieutenant in 2021. I then
11 attained the rank of detective lieutenant later in
12 2021.

13 Q With reference to your current unit, how long
14 have you been a member of that unit?

15 A I've been with the Norfolk State Police
16 Detective Unit for 12 years.

17 Q And, prior to and throughout the course of
18 your work within the detective unit, the Norfolk D.A.'s
19 Office for the state police, what, if any, specialized
20 training have you received and/or given in regard to
21 investigations and how they are conducted?

22 A For the first 10 years as the rank of trooper
23 and sergeant, I was on the homicide section of the
24 unit. When first entering the unit, I received
25 instruction on how to conduct homicide and death

1 investigations.

2 In addition to that, I attended over 200 hours
3 of specialized training in the use of cell phones and
4 cell phone technology in the furtherance of criminal
5 investigations. Further on, I have now been an
6 instructor about cell phones and cell phone technology
7 in criminal investigations. I have taught death
8 investigation classes around the Commonwealth, as well
9 as search and seizure law in Massachusetts.

10 Q Now, if I could ask you, just with respect to
11 your unit, if you could explain to the jury sort of
12 what is the role and what does your unit do with
13 respect to death investigations within Norfolk County?

14 A So each district attorney's office has a state
15 police detective unit assigned to it. So Mass. General
16 Law Section 38, Section 4 says that the district
17 attorney is in charge of all death investigations. So
18 if someone passes away essentially not in the presence
19 of the doctor or the circumstances that led to their
20 death was outside the presence of medical care, the
21 district attorney is in charge of the investigation or
22 their representative. And so each D.A. has a state
23 police detective unit assigned to them to act as their
24 representative.

25 In certain jurisdictions like Boston,

1 Worcester and Springfield, the D.A.s in those counties
2 have said that those local departments can be their
3 representatives. But throughout the Commonwealth, the
4 state police is the D.A.'s representative in those
5 death investigations.

6 Q Now, as far as assignments go or as far as --
7 how is it that -- well, as far as how an investigation
8 is run, how is it that a call comes in? If you could
9 take the jury through sort of from the time the call
10 comes in how that investigation proceeds.

11 A I'll talk in a typical state. Oftentimes
12 someone passes away, again, not in the presence of a
13 doctor, gets found by somebody, a loved one, a friend,
14 a passer-by. They call 911, which gets routed to the
15 local police, who respond and come to learn that
16 someone has passed away in the circumstance.

17 That police department will then call the
18 troop headquarters of the state police. The state
19 police is cut up into different troops by geographic
20 location. Each troop duty lieutenant would have a list
21 of who the on-call person is for the state police
22 detective unit of jurisdiction. They would then call
23 that trooper or sergeant directly to inform them that
24 there is a death in a certain community and give them a
25 telephone number to contact somebody who's directly on

1 scene to get more information.

2 Q Now, as far as your role as sort of the
3 supervisor or the lieutenant in charge of the unit, can
4 you describe to the jury sort of what your role is in
5 regard to those investigations?

6 A So within the detective unit, we have the
7 homicide section. Our narcotic section does narcotics
8 investigations. And a special investigations section.
9 So specific to the homicide section, there are certain
10 levels of supervision. We have a sergeant assigned to
11 the homicide section. I have an executive officer who
12 is a lieutenant and then me. So multiple levels of
13 supervision specific to any of the sections including
14 the homicide section.

15 Q Now, turning your attention to January 29th,
16 2022, at some point did you become aware in the morning
17 with regard to a death within the town of Canton?

18 A Yes.

19 Q What, if any -- when did you become aware and
20 how did you become aware initially of what had
21 transpired?

22 A Shortly after 7:00 a.m. that date, I received
23 a call from Sergeant Yuriy Bukhenik, informing me that
24 a person by the name of John O'Keefe was found
25 unresponsive in Canton. He was transported to the Good

1 Samaritan Hospital, where it was expected he was not to
2 survive.

3 Normally, I would not get a call like that but
4 we learned that Mr. O'Keefe was an active Boston police
5 officer. Sergeant Bukhenik wanted to make me aware of
6 it at that point.

7 Q And so then what happened from there as far as
8 your unit's involvement?

9 A So as we learned more information about what
10 was found on scene by the Canton Police Department,
11 Trooper Proctor, who was the on-call trooper that day
12 on the schedule, and Sergeant Bukhenik responded to
13 Canton Police to begin the investigation. And they
14 would keep me updated as they learned more information.

15 Q Now, as far as your unit is concerned, what,
16 if any, role does your unit have or what, if any,
17 jurisdiction does your unit have with relation to any
18 kind of death, whether it be homicide, suicide,
19 unattended death within the confines of Norfolk County?

20 A We have exclusive jurisdiction by law, but the
21 law also suggests that we need to work with the local
22 police department as well.

23 Q And so how is it that typically, in a typical
24 investigation, that your unit would work in conjunction
25 with the local police departments in relation to a

1 death investigation?

2 A Their detective unit would be involved, if
3 they have one. Some departments in Norfolk County
4 don't. They would stand by to wait for our arrival.
5 There would be constant communication between the
6 responding trooper and the detective on scene about
7 things that need to be done prior to our arrival but,
8 essentially, wait for our guidance on what to do next.

9 Q And, as far as certain investigations go, are
10 there decisions sometimes that are made with regard to
11 your involvement or maybe your unit not being involved
12 in a death investigation?

13 A Yes.

14 Q And how are those determinations made and who
15 makes those determinations?

16 A It falls to either the person who is on call
17 or their supervisor. We don't respond to all of those
18 calls. So a police officer may call and say that a
19 woman in her eighties has passed away in her bed
20 overnight. Her primary care doctor has said that she
21 struggled with cancer or treatment and that that doctor
22 is willing to sign a death certificate.

23 In those circumstances, it's not suspicious.
24 It's not suicide or a fatal opiate overdose. We would
25 not respond in that case. That would be one that we

1 would decline.

2 In other circumstances, we may get the call
3 and then learn that the person is going to survive. So
4 we will not respond. We typically will mirror the
5 office of the chief medical examiner. If they are
6 involved then we will definitely be involved.

7 Q Now, returning to that point as far as the
8 office of the chief medical examiner is concerned, in
9 any sort of death investigation that your unit is
10 involved in, what, if any, involvement or communication
11 do troopers from your unit or yourself have with the
12 office of the chief medical officer?

13 A We have constant communication. The law that
14 I cited also says that the office of the chief medical
15 officer has exclusive jurisdiction, as well, to
16 determine the cause and manner of death. So we work
17 closely, hand in hand, to figure out the circumstances
18 that led to the death.

19 Q Now, as far as working close, hand in hand,
20 with the medical examiner's office, what does that sort
21 of typically entail?

22 A Phone calls. We will call in and speak to the
23 intake person or the on-call doctor to tell them what
24 we've learned or what we are observing. We forward
25 reports in every case to the doctors so they understand

1 at least what we've learned in the first 24 hours.

2 Doctors will often reach back out to us, asking for
3 scene photographs, more reports, ask question. And, in
4 instances where it's a suspicious death, we will send
5 an investigator to the autopsy to stand with the doctor
6 to make observations and answer any questions for the
7 doctor.

8 Q Now, as far as the determinations that are
9 ultimately come to by the medical examiner -- I'm
10 sorry. Just let me --

11 Lieutenant, as far as any determinations that
12 are made with reference to either cause or manner in
13 any instance with the medical examiner, what, if any,
14 role do you or anyone from your unit have with regard
15 to that decision by the medical examiner?

16 A We have little to no role outside of providing
17 information.

18 Q And, as far as the determination,
19 specifically, whether it's manner or cause, what, if
20 any, impact does that have with regard to any death
21 investigation that you're doing?

22 A Well, the cause will give us a big incidence.
23 So we want to know if the person died of a heart attack
24 or if they died of a gunshot wound. That's big when it
25 comes to then making charging decisions about the

1 circumstances. So it's important to learn the cause,
2 and to get the doctor's input on the manner is also
3 helpful.

4 Q But, as far as if the manner is found to be
5 undetermined, would that impact what you've learned
6 through the rest of the course of your investigation as
7 far as charging goes?

8 A No. That determination by the OCME is often
9 in the early stages of the investigation. And, as we
10 learn more information, the circumstances can change.

11 Q And the determination that is made by the
12 medical examiner, that's strictly from a medical
13 perspective, correct?

14 A Correct.

15 Q Now, with regard to January 29th, 2022 and
16 this call that is initially received, Trooper Proctor
17 and Sergeant Bukhenik then essentially respond to the
18 Canton Police Department first; is that correct?

19 A Yes.

20 Q And, as far as your role as it pertains to
21 this or any other investigation, how much involvement
22 do you have or how are you sort of apprised of what's
23 going on?

24 A Sergeant Bukhenik in this case and in typical
25 cases, he keeps me updated by telephone. So I can

1 supervise from anywhere with my cell phone. He's
2 giving me updates about what he's learning. We'll
3 discuss what the next steps should be. That's what
4 transpired over the morning of January 29th.

5 Q Now, over the course of the morning of January
6 29th, what, if any, conversations did you have with
7 relation to Canton Police Department's involvement or
8 ongoing or further involvement with regard to this
9 investigation?

10 A I had spoken with the acting chief at the
11 time, the current chief. Excuse me. The chief at the
12 time, Kenneth Berkowitz, about the involvement in the
13 Canton Police Department. We talked about the
14 homeowner at 34 Fairview and his relationship to his
15 department. And, because of the appearance of a
16 conflict, we had made a decision that the Canton Police
17 was going to take a step back from the investigation
18 and that the state police would do the investigation
19 without them.

20 Q Now, as far as that appearance of a conflict
21 or step back, as you've termed it, what was your
22 understanding at that time as far as what the role of
23 the Canton Police would be?

24 A Really to provide support. So anytime we are
25 in a local community and we need the support of local

1 police, if we are going to start knocking on doors, we
2 want to make sure that they are aware or present. They
3 have resources in town, whether it be lights or
4 barriers, that we may need to access. So I would
5 define it as a support role.

6 Q Now, with respect to those conversations you
7 mentioned that you had yourself and what the then
8 current chief, Kenneth Berkowitz, who, if anyone else,
9 was involved in those conversations?

10 A The district attorney.

11 Q And that would be Mr. Morrissey; is that
12 correct?

13 A Yes.

14 Q And is that abnormal for him to be involved in
15 conversations in regard to a police department and any
16 sort of appearance of conflict?

17 A No. It's not abnormal for him to be involved.

18 Q And, as far as his involvement and his
19 conversations as far as you're aware, did they evolve
20 or were they any greater or less than the conversation
21 that you had with Chief Berkowitz?

22 A No. They were the same conversations.

23 Q Let me ask you this, Lieutenant: At some
24 point over the source of this case or at some point
25 over the course of this investigation, did you become

1 aware of certain text messages on Trooper Proctor's
2 personal phone?

3 A Yes.

4 Q Upon your being made aware of those text
5 communications, what, if anything, did you as his
6 supervisor, what, if anything did you do?

7 A I had a long discussion with him about the
8 content and nature of them. I expressed my displeasure
9 in his unprofessionalism and the content of them. And
10 then I reported up my chain of command.

11 Q Was he admonished in any way?

12 A He was by me at that conversation, yes.

13 Q Now, sir, again, just sort of in general
14 terms, you're familiar with this investigation as you
15 were supervising the unit that was investigating it,
16 correct?

17 A Yes.

18 Q Now, is it typical practice in conducting
19 homicide or death investigations as far as civilian
20 witnesses are concerned to seize their personal cell
21 phones?

22 A It happens, yes.

23 Q And is that a practice that occurs with
24 respect to every single witness in every single case?

25 A No.

1 Q And so what are sort of the parameters or what
2 would be some of the reasons that certain civilian
3 witnesses' cell phones would be seized versus others?

4 A You use the word "seize." When I think of the
5 word "seize," I'm thinking in the legal context where I
6 think there's probable cause to believe, it's more
7 likely than not there is evidence of the crime I'm
8 investigating held within the data of that phone.

9 Sometimes if we believe there is information
10 on a phone, we may ask for consent for that one
11 specific thing or for that one specific reason. But
12 outside of that, unless I have that belief that there
13 is data on a phone, I won't ask for consent or seize a
14 phone and pursue a search warrant.

15 Q Now, are you aware of certain cell phones that
16 were either seized or granted access via consent in
17 relation to this investigation?

18 A Yes.

19 Q And, specifically, Mr. O'Keefe's phone was
20 taken into custody, correct?

21 A Yes.

22 Q And the defendant's phone was taken into
23 custody on January 29th, as well?

24 A Yes.

25 Q Now, as far as civilians, there were two

1 civilian witnesses whose phones were given via consent
2 and then extracted, that being a Jennifer McCabe and a
3 Kerry Roberts, correct?

4 A Yes.

5 Q And so why was it that Ms. McCabe's phone and
6 Ms. Roberts' phone was taken versus some other witness
7 in the case?

8 A They had information relative to the actions
9 of Ms. Read and the communications with specifically
10 those two individuals on the morning of the 29th. So
11 we wanted to memorialize them and save them.

12 Q Now, sir, with respect to your involvement on
13 January 29th, where and when did you sort of leave and
14 become involved in the investigation beyond sort of a
15 supervisory role?

16 A Shortly after noontime, we had learned more
17 information that necessitated a broader search. So I
18 had reached out to Lieutenant Kevin O'Hara with the
19 state police SERT team to assist with processing the
20 scene. And so since we were going to be processing a
21 scene, it was prudent for me to leave my house, dig out
22 and drive to Canton.

23 Q And, sir, with respect to you mentioned dig
24 out from your house, what were the conditions like
25 around the time that you were leaving your house?

1 A There was probably eight to 10 inches at the
2 house. So I had to dig out my driveway and the large
3 snowbank at the end of the driveway that's caused by
4 the plow in order to get a vehicle out and head to
5 Canton.

6 Q And where is it first that you were heading
7 to?

8 A I first went to the Canton Police Department
9 to talk to Chief Berkowitz and wait for the arrival of
10 the SERT team and then to 34 Fairview.

11 Q And, as far as the SERT team was concerned, if
12 you can, explain to the jury sort of the process from
13 your perspective, from your end, as far as activating
14 the SERT team, what it is that they do and why you had
15 requested them.

16 A We work with Lieutenant O'Hara frequently. I
17 called him on his cell phone. And the SERT team is out
18 of a different chain of command. So the state police
19 is a very paramilitary organization with specific
20 chains of commands, with different structures.

21 So I reached out to him and asked for his
22 assistance with this investigation. He had to get
23 further approval up his chain of command mostly for
24 overtime and to pay the troopers to come out. That
25 would be the way that I would make a formal request of

1 the SERT team.

2 Q And so the initial phone call that you make to
3 Lieutenant O'Hara, you don't have the power or the
4 authority to sort of direct him to dispatch his team
5 and go to 34 Fairview, correct?

6 A Correct.

7 Q And so as far as that initial phone call that
8 you make to Lieutenant O'Hara, do you know about what
9 time of day that was?

10 A It was about two in the afternoon.

11 Q And what was the purpose of sort of that
12 initial phone call that you made to Lieutenant O'Hara?

13 A To give him a head's-up because there needs to
14 be a conversation up my chain of command. So above me
15 there is a detective captain and a major.

16 My major really needs to talk to his major to
17 make the formal request, but I wanted Lieutenant O'Hara
18 to be aware the request was coming so that he could at
19 least start polling his people to see who was available
20 to respond to Canton.

21 Q And, with respect to the weather, if you could
22 just in general terms describe for the jury sort of
23 what you observed as far as the weather conditions on
24 that day?

25 A I observed blizzard-like conditions. It was

1 snowing heavily, windy, low visibility.

2 MR. LALLY: Your Honor, may I approach?

3 THE COURT: Yes.

4 BY MR. LALLY:

5 Q Sir, I'm showing you a series of documents and
6 just ask if you could look at those and look up when
7 you're finished.

8 A (Witness complies.)

9 Q And do you recognize those, sir?

10 A I do.

11 Q And what do you recognize those to be?

12 A They are certified records from the U.S.
13 Department of Commerce out of Ashville, North Carolina
14 for weather reports from Norwood Memorial Airport in
15 Massachusetts for the dates of January 2022 and
16 February 2022.

17 Q So for the entirety of the month of January
18 2022 as well as February 2022, correct?

19 A Yes.

20 Q And are you familiar with the Norwood
21 Municipal Airport and where it is in relation to the
22 town of Canton?

23 A Yes.

24 Q And where is it?

25 A It's the next town over.

1 Q And, as far as -- are you familiar with a
2 Neponset Street in Norwood?

3 A I am.

4 Q And does Neponset Street also carry into the
5 town of Canton, as well?

6 A Yes.

7 Q And, with regard to 34 Fairview Road, about
8 how far away is 34 Fairview from Neponset Street?

9 A From Neponset Street it's a mile, two miles.

10 Q So relatively the same geographic area as far
11 as the Norwood Municipal Airport and 34 Fairview Road?

12 A I would say as the crow flies from 34 Fairview
13 to Norwood Municipal Airport, that's probably three
14 miles.

15 Q And, sir, with regard to the records before
16 you, from your memory of those dates and those times in
17 January and February of 2022, is that a fair and
18 accurate portrayal of what the weather was like
19 temperature-wise as well as precipitation?

20 A Yes.

21 MR. JACKSON: Objection.

22 THE COURT: I'll allow it.

23 MR. JACKSON: Fine.

24 THE WITNESS: Yes.

25 MR. LALLY: Your Honor, may I approach?

1 THE COURT: Yes.

2 MR. LALLY: The Commonwealth would seek to
3 introduce and admit as the next exhibit.

4 MR. JACKSON: Objection.

5 THE COURT: Sustained. Come up.
6 (Whereupon, there was a sidebar conference as
7 follows:)

8 THE COURT: Court Order: Jurors or Juror Issues

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 MR. JACKSON: Really? I want to go to that.

14 THE COURT: Good luck. All right. What is
15 your objection?

16 MR. JACKSON: Foundation. He didn't prepare
17 these. They may be certified from somebody else,
18 but he can't speak to these. These are
19 climatological records that he didn't prepare. He
20 doesn't know they are prepared or how they are
21 kept. I have no problem with the evidence that
22 Mr. O'Keefe -- not that you care what I think, but
23 the evidence that Mr. Lally has gotten is fine.
24 There is no foundation for that. There is no
25 authentication for that.

1 THE COURT: How did he get these?

2 MR. LALLY: It's a certified self-
3 authenticating document. It's a business record.

4 THE COURT: So go ahead and build your
5 foundation, and I'll instruct on business record if
6 you do.

7 MR. JACKSON: He's going to try to build a
8 foundation that this witness knows that these are
9 kept in the ordinary course of business, how they
10 are kept and the data entered.

11 THE COURT: I don't know.

12 MR. JACKSON: Okay.

13 MR. LALLY: It states it on the front. It's a
14 raised seal certification.

15 THE COURT: Do you need these from him right
16 now?

17 MR. LALLY: No.

18 THE COURT: Okay. So let me take a look at
19 this. Let's just keep going with the evidence.
20 Okay?

21 MR. LALLY: Sure.

22 (Whereupon, the sidebar conference concluded.)

23 THE COURT: Madam Court reporter, please mark
24 this for identification.

25 (Whereupon, weather records were entered and marked

1 "JJJ" for Identification.)

2 THE COURT REPORTER: "JJJ" for Identification.

3 BY MR. LALLY:

4 Q And so, Lieutenant, at some point you do
5 respond to 34 Fairview Road; is that correct?

6 A Yes.

7 Q And do you recall about what time it was that
8 you arrived there?

9 A 5:30 p.m.

10 Q And, when you arrived there, who, if anyone
11 else, from the state police preceded your arrival?

12 A There was at least two members of the SERT
13 team present, including Lieutenant O'Hara.

14 Q And, if you recall, where were they located in
15 relation to the residence?

16 A They were directly in front of the residence.

17 Q Now, as far as their search was concerned, how
18 was the determination made or who, if anyone, made a
19 determination as far as where they were going to
20 search?

21 A So typically when I work with Lieutenant
22 O'Hara, I kind of give him directions. So in this case
23 specifically, I learned from Sergeant Bukhenik that
24 Mr. O'Keefe was found in an area between the flagpole
25 and the fire hydrant. So we concentrated on that area.

1 And so I talked with Lieutenant O'Hara that this is
2 going to be our parameters. And he instructed his
3 people how to deploy to that area.

4 Q Now, sir, as far as beyond sort of directing
5 as far as an area is concerned, what, if any, other
6 involvement do you typically have when it comes to the
7 SERT team and how they conduct their search?

8 A They're professionals with expertise in that.
9 So essentially I just point them in the direction and
10 it's up to them to figure out how to deploy and get the
11 mission done.

12 Q And so what, if any, involvement do you have
13 as far as when they begin and how many people are
14 involved and when they end or anything like that?

15 A I'll have some consultation with
16 Lieutenant O'Hara but it's really his call to make.

17 Q And, as far as this particular search on
18 January 29th, do you know how many members of the SERT
19 team eventually responded and how the search was
20 conducted?

21 A There were seven members. Most, if not all,
22 had typical snow shovels and they used those shovels to
23 systematically go through the snowbank that was in
24 front of 34 Fairview within these two parameters.

25 Q And, over the course of -- now, as far as

1 where they were searching, can you describe sort of the
2 road conditions as far as snow removal is concerned or
3 where the precipitation amounts were concentrated with
4 respect to the roadway?

5 A So the road was only plowed really right down
6 the middle. Barely two vehicles could get by at a
7 time. The snowbanks on either side of the road were
8 protruding into the road. So that was kind of the snow
9 setup. Our cruisers were just kind of buried in
10 snowbanks a little bit down the road as we excavated
11 this.

12 Q And, sir, as far as this search was concerned,
13 what, if any, information did you provide to
14 Lieutenant O'Hara as far as items being searched for or
15 what was he directed to be looking for?

16 A There were items, two items specifically. We
17 were looking for potential pieces of a taillight of a
18 vehicle and a shoe.

19 Q And, as far as a shoe and potential pieces of
20 a taillight, where did that information come from or
21 why were those the items that were being looked for?

22 A Relative to the shoe, when Sergeant Bukhenik
23 and Trooper Proctor responded to Good Samaritan
24 Hospital and collected the clothing of Mr. O'Keefe,
25 they realized that there was only one shoe present at

1 the hospital. They had contacted the Canton EMS and
2 other people who cared for him and they learned that a
3 shoe wasn't removed at the scene and that when Canton
4 Fire and EMS arrived, Mr. O'Keefe only had one shoe on.
5 So it was important to locate that second shoe.

6 Relative to the taillight, we had gotten
7 information that witnesses stated that Ms. Read's
8 vehicle had a broken taillight. And so we were looking
9 for evidence of it being broken at that location.

10 Q And, with respect to the search that was
11 conducted by Lieutenant O'Hara and members from his
12 SERT team, where was that in relation to either the
13 roadway or the front lawn of 34 Fairview?

14 A As we were excavating or as they were
15 excavating this snowbank in front of it, we realized
16 that the snowbank protruded about three feet into the
17 roadway. So as they were moving this first part of the
18 snowbank, we're essentially shoveling the road. And so
19 as they continued on there, they would then hit the
20 curb area.

21 Q And, as far as beyond the curb area, as far as
22 grass or the front lawn, was the SERT team members,
23 from your observations, able to go beyond the curb,
24 into the front lawn area?

25 A No. They were having difficulty shoveling

1 with a plastic shovels from the lawn.

2 Q Lieutenant Tully, with respect to the SERT
3 team in their search, what, if anything, did you do to
4 document and memorialize their efforts as far as any
5 items that were recovered?

6 A I took photographs of items that were
7 eventually found in place and documented them in a
8 report and they were collected in evidence bags.

9 MR. LALLY: May I approach the witness, Your
10 Honor?

11 THE COURT: Yes.

12 MR. LALLY: Your Honor, if I may have one
13 moment?

14 THE COURT: Yes. Jurors, we'll be stopping at
15 four today.

16 BY MR. LALLY:

17 Q Sir, with respect to what I placed before you
18 as Book 2, I am going to direct your attention to
19 what's been marked as Exhibits 111 through 134. And,
20 just in general, I'm going to ask you if you recognize
21 those.

22 A I do.

23 Q And what do you recognize those as?

24 A The photographs that I took that afternoon.

25 MR. LALLY: May I approach just to retrieve,

1 Your Honor?

2 THE COURT: Yes.

3 MR. LALLY: Your Honor, I don't want to
4 belabor the point but if I could just publish just
5 a couple of these exhibits?

6 THE COURT: Okay.

7 MR. LALLY: And, Ms. Gilman, if I could have
8 Exhibit 111.

9 BY MR. LALLY:

10 Q Lieutenant, there should be a laser pointer on
11 the desk before you. If I could ask, first of all, do
12 you recognize what is up on the screen as Exhibit 111?

13 A Yes.

14 Q And what do you recognize that to be?

15 A The front of 34 Fairview Road in Canton and
16 the flagpole I previously mentioned.

17 Q And, if you could, using the laser pointer,
18 just direct the attorney's attention to what, if
19 anything, of significance you observed in this exhibit.

20 A So this picture was taken to memorialize this
21 piece of red plastic here.

22 MR. LALLY: And, Ms. Gilman, if I could have
23 Exhibit 114.

24 Q Again, Lieutenant, do you recognize what's up
25 on the screen as Exhibit 114?

1 A Yes.

2 Q And, if you could, using the laser pointer,
3 direct the jury's attention to what, if anything, of
4 significance you observed there?

5 A It's that same previously mentioned red
6 plastic. The purpose of the multiple photographs, I'll
7 take one as overalls and, as I get closer, I'll take
8 more photographs to give better context.

9 Q And these photographs of these items, were
10 they taken -- the items that you're photographing, were
11 they moved in any way prior to you memorializing them
12 with photographs?

13 A Yes. This piece in particular, a SERT team
14 member, as he was removing the snow with the shovel,
15 had picked up this piece of plastic with it. I asked
16 him to place it back where he found it, where it
17 approximately was, so that I could memorialize it in
18 place.

19 Q So it was picked up and you asked him to put
20 it back where he had found it, and he did so?

21 A Yes.

22 MR. LALLY: Ms. Gilman, if I could have
23 Exhibit 117.

24 Q And, again, Lieutenant, do you recognize
25 what's up on the screen as Exhibit 117?

1 A Yes.

2 Q What do you recognize that to be?

3 A Members of the SERT team doing their
4 excavation of the snowbank.

5 MR. LALLY: And, Ms. Gilman, if I could have
6 Exhibit 120.

7 Q And, again, sir, do you recognize what's up on
8 the screen as Exhibit 120?

9 A Yes.

10 Q And, if you could, using the laser pointer
11 direct the jury's attention to what, if anything, of
12 significance you observed in this photograph.

13 A A black Nike sneaker with a white sole that
14 was recovered in the snowbank.

15 Q And, at some point subsequent to this, what,
16 if any, comparison did you do visually with the sneaker
17 that you observed in this photograph with respect to
18 the sneaker that was recovered from the Good Samaritan
19 by Trooper Proctor and Sergeant Bukhenik?

20 A They matched both in make and model, size.
21 The shoe that was recovered by the troopers at the
22 hospital was a right sneaker. This one found was the
23 left or a left.

24 MR. LALLY: Ms. Gilman, if I could have
25 Photograph 127.

1 Q And, again, sir, do you recognize what's up
2 there as 127?

3 A Yes.

4 Q And, if you could, using that laser pointer
5 direct the jury's attention to what, if anything, of
6 significance you observe in that photograph?

7 A A clear piece of plastic.

8 Q Now, with respect to this clear piece of
9 plastic, what, if anything, did you observe or did you
10 note of significance as far as the surface of that
11 particular piece of clear plastic?

12 A I noticed that it's curvature in shape and
13 there are raised dimples, for lack of a better term,
14 that were along the outside of this piece of plastic or
15 on one side of it.

16 MR. LALLY: Now, Ms. Gilman, if I could have
17 lastly from this group Exhibit 131.

18 Q And, again, Lieutenant, do you recognize
19 what's up on the screen as Exhibit 131?

20 A Yes.

21 Q And what do you recognize that to be?

22 A That is a photograph that I took at 34
23 Fairview that depicts a red piece of plastic.

24 MR. LALLY: Ms. Gilman, you can take that
25 down. Mr. Officer, if we could have the lights

1 back on. Thank you very much, sir.

2 Q Now, with respect to the items that were
3 observed and photographed by you on January 29th during
4 the SERT team search, what happened with those items
5 from the scene?

6 A They were collected, placed in an evidence bag
7 and brought back to our offices to be secured.

8 Q And, if you could, as far as the evidence sort
9 of system is conducted with regard to this case and
10 other cases in investigations within your unit, can you
11 explain to the jury that process of sort of when an
12 item is seen or an item of evidentiary value is seized,
13 what happens with it?

14 A First, to provide context, by policy, I am the
15 evidence officer for the unit, and I have assistant
16 evidence officers who assist me in the caretaking of
17 the evidence.

18 So we will use this particular instance where
19 evidence is collected at a scene. It's memorialized in
20 place and placed, if it's in the right shape and the
21 right condition, in a paper bag with some notes placed
22 on the outside of the bag, transported to our office,
23 where it is secured in either a temporary locker or the
24 permanent evidence area.

25 Q And, as far as when it's taken into custody

1 and put into a bag, what is sort of the protocol or the
2 policies with regard to how that bag is marked or what
3 is done with that bag once you have the item contained
4 therein?

5 A There is certain pieces of information that
6 will typically go on the bag: The name of the person
7 who is picking the evidence up and putting it in the
8 bag, the date and time, location, a brief description
9 of the evidence contained in the bag. It will then be
10 taped and initials will be placed on the tape to
11 memorialize who did the taping and the date on which
12 the taping occurred.

13 Q And, as far as the supervisor as far as
14 evidence is concerned, you mentioned that there are
15 some evidence officers who are assistants to you as the
16 actual evidence officer?

17 A Yes.

18 Q And, at this time in January 29th, 2022, who
19 were those evidence officers within your unit?

20 A Relative to the homicide section, it was
21 Trooper Jeff Kotkowski and Trooper David DiCicco.

22 Q Now, with respect to the evidence storage at
23 your office, can you explain to the jury sort of how
24 that is managed, where it is and how items are checked
25 into evidence once they are seized?

1 A We have an evidence tracking system. So, as
2 evidence comes in, we place it into the system. A
3 label will be created and placed on the outside with
4 the case number and an item number specific to that
5 bag. It will be placed into the evidence room which is
6 locked in two different methods and has an alarm code
7 pad. And you need your I.D. pass to swipe in order to
8 enter. And only certain members of the unit have
9 access and know the code to the alarm, me obviously
10 would be one and the two assistant evidence officers.
11 And that is subject to inspection by the state police
12 frequently.

13 Q And correct me if I'm wrong, but at this
14 time it's essentially yourself, Trooper DiCicco and
15 Trooper Kotkowski who had access to that evidence
16 storage area?

17 A Yes.

18 Q Now, with respect to the remainder of the
19 troopers within your unit, would they have access to
20 that same evidence storage area?

21 A No.

22 Q Now, with respect to your unit at this time in
23 late January of 2022, how many troopers were in your
24 unit or under your supervision in the detective unit at
25 that time?

1 A There were 13 under my supervision for the
2 unit as a whole. Specific to the homicide section,
3 there were four troopers and one sergeant.

4 Q And that number as far as four troopers and
5 one sergeant, is that sort of a typical number, a low
6 number, high number?

7 A Historically, for Norfolk, that was a low
8 number. We have since had more transfers come into the
9 unit.

10 Q And how many do you supervise within the
11 homicide unit at this point?

12 A One sergeant and seven troopers.

13 Q Now, with respect to the evidence storage
14 area, is there sort of a temporary versus a permanent
15 storage area contained within that locked and coded
16 storage area?

17 A Yes.

18 Q And can you describe sort of the difference
19 between the two and how things are managed by either
20 you or your assistants with regard to evidence within
21 the locked storage area?

22 A So because only essentially three people have
23 access to the permanent storage area, if a member
24 collects evidence and brings it back to the office and
25 doesn't have access to the main storage area, we have

1 another temporary storage area that is allowed by
2 policy where they can then secure the evidence.

3 The next available time the person who has
4 access to the main room will come in and transport that
5 piece of evidence from the temporary area to the
6 permanent area.

7 Q And as far as that transportation or
8 transmission from the temporary area to the permanent
9 area, what, if any, sort of documentation is generated
10 in regard to that?

11 A There is no notation from one location to the
12 other as allowed by policy.

13 Q And, as far as when items are seized and when
14 labels are sort of printed in relation to those items,
15 is that always done sort of simultaneously as when the
16 item comes in, or how is that typically done, timing-
17 wise?

18 A Well, the same with the label-printing system.
19 So only the evidence officers had the ability to create
20 the labels and put it into the system. So you need
21 them to create the labels. So if a member comes in and
22 doesn't have access to that system, places it in the
23 temporary storage area at the next available
24 opportunity for an evidence officer or assistant
25 evidence officer to arrive, know that there is evidence

1 there, process it and place a label on it and stick it
2 in the permanent storage area.

3 Q Now, with respect to those items that you
4 recovered from 34 Fairview Road, the roadway in front
5 of it, where were those items located with respect to
6 each other?

7 A They were in total within a five-foot area.
8 So if you're looking at the house, from right to left
9 was how they were found. First was that first picture
10 you displayed, which was the red piece of plastic.
11 About three feet from that was the Nike sneaker. About
12 one or two feet to the left of that was the clear
13 plastic, and just next to that was another piece of red
14 plastic along the curve of the road.

15 Q And, as far as those items that were recovered
16 and bagged and placed into evidence on January 29th,
17 did you have occasion to bring those items with you to
18 court today?

19 A Yes.

20 MR. LALLY: And, Your Honor, may I approach?

21 THE COURT: Yes.

22 BY MR. LALLY:

23 Q Sir, I am presenting you with a bag.
24 Lieutenant, first, just with reference to the item I've
25 placed before you, do you recognize that?

1 A Yes.

2 Q And what do you recognize that to be?

3 A The bag that contains the left sneaker that
4 was seized from 34 Fairview Road that day outside of
5 the residence.

6 MR. LALLY: Your Honor, with the Court's
7 permission, may the witness remove that item from
8 the bag and display it for the jury?

9 THE COURT: Yes.

10 (Witness complies.)

11 BY MR. LALLY:

12 Q Thank you, sir. If you could place that in
13 the bag?

14 MR. LALLY: Your Honor, the Commonwealth would
15 seek to introduce and admit as the next exhibit.

16 THE COURT: Okay.

17 MR. JACKSON: No objection.

18 (Whereupon, bag containing sneaker was entered and
19 marked Exhibit No. 569 in Evidence.)

20 THE COURT REPORTER: Exhibit 569.

21 THE COURT: Thank you.

22 MR. LALLY: May I approach again, Your Honor?

23 THE COURT: Yes.

24 BY MR. LALLY:

25 Q Sir, I'm handing you two separate bags. If you

1 could view those and look up when you finish.

2 A (Witness complies.)

3 Q Do you recognize each of those respective
4 bags, sir?

5 A Yes.

6 Q What do you recognize those to be?

7 A The bags that contain the red and clear
8 plastic pieces that were recovered from the roadway in
9 front of 34 Fairview Road.

10 Q Sir, if you could, just with respect to each
11 of those bags, read what is listed as the description
12 on the outside of the bag to the jury?

13 A The description on this first one is (as
14 read), "Pieces of clear, hard plastic taillight cover,
15 location 34 Fairview Road, Canton."

16 Q And the second, please?

17 A The description is (as read), "Pieces of red
18 hard plastic taillight cover, location 34 Fairview
19 Road, Canton."

20 MR. LALLY: And, Your Honor, with the Court's
21 permission, I would ask that the witness be allowed
22 to open each of those bags and display the items
23 for the jury.

24 THE COURT: Okay.

25 BY MR. LALLY:

1 Q Sir, if I could ask you to start with the red
2 plastic.

3 A Okay. (Witness complies.)

4 Q Thank you, sir.

5 MR. LALLY: Your Honor, the Commonwealth would
6 seek to introduce and admit those as the next
7 exhibit.

8 THE COURT: All right. Mr. Jackson, are they
9 coming in?

10 MR. JACKSON: No objection, Your Honor. Thank
11 you.

12 (Whereupon, bag containing two pieces of red
13 plastic was entered and marked Exhibit 570 in
14 Evidence.)

15 THE COURT REPORTER: Exhibit 5-7-0.

16 BY MR. LALLY:

17 Q Now, Lieutenant, before we get to the next
18 item before you, if I could just ask a couple of
19 questions in regard to the search.

20 On January 29th, 2022, about what time is it
21 that you arrived in the area of 34 Fairview?

22 A About 5:30.

23 Q And had yourself or any members of your unit
24 to your knowledge been at 34 Fairview at any point in
25 time prior to your arrival there that day?

1 A No.

2 MR. JACKSON: Objection.

3 THE COURT: No. I'll allow it as to whether
4 he knows. He said "no."

5 BY MR. LALLY:

6 Q And about how long was it that you were on
7 scene at 34 Fairview that day?

8 A About an hour.

9 Q Now, with respect to when these items were
10 found, do you know approximately what time the first
11 item was located by a member of the SERT team?

12 A Yes.

13 Q And what time was that?

14 A 5:45.

15 Q Now, with respect to at any point in time that
16 you were on scene at 34 Fairview Road on January 29th,
17 2022, was either Trooper Proctor or Sergeant Bukhenik
18 on scene at 34 Fairview while you were there?

19 A No.

20 Q And, with respect to around that time, as
21 their supervisor, were you aware of where they were or
22 their location at that time?

23 A Yes.

24 Q And where was that?

25 A They were following a tow truck that was

1 towing Ms. Read's vehicle from Dighton to Canton.

2 Q Now, with respect to the vehicle and/or the
3 pieces of red and clear plastic that were found by the
4 SERT team at 34 Fairview Road on January 29th, what, if
5 any, conversation did you have with respect to
6 Lieutenant O'Hara in regard to the vehicle and sort of
7 the damage on the vehicle?

8 MR. JACKSON: Objection.

9 THE COURT: I'll allow that.

10 THE WITNESS: We wanted to know what we were
11 looking for. Specifically, Lieutenant O'Hara
12 wanted to know what are we looking for and what's
13 the scope of the items we're looking for. So we
14 had discussion about how much taillight we believed
15 was missing from Ms. Read's vehicle so that as we
16 go along, we would know if we had enough or we had
17 it all, I should say.

18 Q And so with respect to that, what, if
19 anything, were you able to share with Lieutenant O'Hara
20 with respect to Ms. Read's vehicle at that particular
21 time?

22 A I didn't have much information because it was
23 still on a tow truck or being loaded up to the Canton
24 Police Department at that time. So I didn't have any
25 actual knowledge about how much taillight we're looking

1 for.

2 Q And, prior to you leaving from the scene at 34
3 Fairview Road along with the SERT team on that day of
4 January 29th, even at that time did you know the full
5 extent or how much taillight you were looking for at
6 that time?

7 A No.

8 Q Now, sir, if I could ask you just to --

9 MR. LALLY: With the Court's permission, Your
10 Honor, may he remove the items from that second bag
11 before him?

12 THE COURT: Yes.

13 (Witness complies.)

14 BY MR. LALLY:

15 Q Now, Lieutenant, from the two items that you
16 have before you in your hand, you had made reference to
17 one of those clear pieces having some sort of stippling
18 or raised surfaces on it; is that correct?

19 A Yes.

20 Q And, if you could just with your fingers or
21 just in some way delineate to the jury where you
22 observed that to be?

23 A So you could see that as you looked through
24 it. You can see almost bubbling of it. As you run
25 your finger along, you can feel indentations along

1 there, as well as the ridges that are along the top end
2 here that appear on both pieces.

3 Q And, Lieutenant, if you could, you can place
4 those items back in the bag.

5 A (Witness complies.)

6 MR. LALLY: And, Your Honor, the Commonwealth
7 would seek to introduce and admit as the next
8 exhibit.

9 MR. JACKSON: No objection.

10 (Whereupon, bag containing two pieces of clear
11 plastic was entered and marked Exhibit No. 571 in
12 Evidence.)

13 THE COURT REPORTER: Exhibit 571.

14 THE COURT: Thank you.

15 MR. LALLY: Your Honor, given the time and
16 given where I am -- why don't you come to sidebar.
17 (Whereupon, there was a sidebar conference as
18 follows:)

19 THE COURT: All right. So --

20 MR. LALLY: I'm very happy to keep going, but
21 I just noticed that it was 3:56 and I'm about to
22 sort of switch topics with the lieutenant.

23 THE COURT: All right. How much longer do you
24 have with him?

25 MR. LALLY: About 45 minutes, an hour.

1 Something like that.

2 THE COURT: Okay. And then you've got your
3 DNA people tomorrow?

4 MR. LALLY: That's right. And before I can
5 really get to the Bode people, I need to get
6 Mr. Porto done and Sergeant Gallerani done.

7 THE COURT: Okay.

8 MR. JACKSON: Can I inquire of the order? So
9 it's going to be we finish Tully and then --

10 MR. LALLY: No. I can't --

11 THE COURT: Let me let the jury go.

12 MR. LALLY: Sure.

13 MR. JACKSON: Sure.

14 (Whereupon, the sidebar conference concluded.)

15 THE COURT: All right. Jurors, I am going to,
16 rather than while we keep talking, I'm going to go
17 ahead and send you home. Please do not discuss
18 this case with anyone. Don't do any independent
19 research or investigation into the case. If you
20 happen to see, hear, read anything about the case,
21 please let us know. We'll see you tomorrow.

22 So tomorrow will be 9:00 to 4:00, 9:00 to
23 4:30. We hope to get started right away. Okay?

24 And, Detective Lieutenant, I am just going to
25 ask you to file out after the jury.

1 THE WITNESS: Yes.

2 (Whereupon, the jury is escorted from the courtroom
3 and excused for the day.)

4 (Whereupon, the sidebar conference continued as
5 follows:)

6 THE COURT: So you wanted to know the order?

7 MR. JACKSON: Yes, ma'am.

8 MR. LALLY: If there is no objection to it, I
9 think my preference would be just to get the Bode
10 people out of here. If we finish with Lieutenant
11 Tully, then do Sergeant Gallerani, just because I
12 have to do him before we do the two Bode people.
13 And then I can go to Mr. Porto sort of out of turn.

14 THE COURT: Who is the last one?

15 MR. LALLY: Andre Porto. So he is the one who
16 does all the DNA for the state police lab.

17 THE COURT: Okay.

18 MR. LALLY: Which has some connection to --

19 THE COURT: Is it going to make any sense if
20 he goes after you hear from the DNA experts from
21 Bode?

22 MR. LALLY: Well, so he does a bunch of other
23 items. The only connection is that he also does
24 the testing on the taillight and the initial
25 testing on the hair, which is why everything goes

1 to Bode in the first place.

2 So I would prefer to do Mr. Porto first, but
3 I'd also prefer not to have Mr. Bradford and his
4 chart have to spend an extra day that they don't
5 need to.

6 MR. JACKSON: I don't think we care. They're
7 not my witnesses, but I don't --

8 MR. YANNETTI: We don't care. That's fine.

9 MR. JACKSON: We were sort of expecting them
10 in a lump, just not this lump. So that's fine.

11 THE COURT: All right. Sometimes it's helpful
12 for the jury to let them know if somebody is being
13 taken out of order because things aren't naturally
14 going to make sense.

15 MR. LALLY: I would ask for some kind of --

16 THE COURT: So write up a little something
17 that you'd like me to say and let's just play it
18 out and see how it goes.

19 MR. LALLY: Okay.

20 THE COURT: So tomorrow we'll be hopefully
21 right up to 4:30 with a very short lunch and to get
22 started right at 9:00 o'clock.

23 MR. JACKSON: May I have permission to look --
24 if I can ask Mr. McDermott to look in the -- I
25 think it's 570, was the bag that was just opened.

1 I'd like to look in it before we leave.

2 THE COURT: Sure. I'll stay here. Is there
3 something you might want to put on the record?

4 MR. JACKSON: No. I don't think so. It's
5 just for my edification. I just want to look at
6 it. I just didn't want to take possession of it
7 with the Court on the bench and --

8 THE COURT: Yes. That's good. Okay. We'll
9 see you tomorrow.

10 MR. LALLY: Thank you, Your Honor.

11 (Whereupon, the sidebar conference concluded and
12 the Court adjourned.)
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C E R T I F I C A T E

I, Paula M. Mills, retired certified court reporter, do hereby certify that the foregoing pages, page 29-3 to 29-49, is a true and accurate transcription of the voice recording in the aforementioned matter to the best of my skill and ability.

This, the 26th day of December, 2024.

\s\ Paula M. Mills

Paula M. Mills

Retired Certified Court Reporter
and Court Transcriptionist